

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY FREDIANELLI,

No. C-11-3232 EMC

Plaintiff,

v.

**ORDER RE DEFENDANTS'
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL**

STEPHAN JENKINS, *et al.*,

(Docket No. 172)

Defendants.

The Court is in receipt of Defendants' administrative motion to file under seal, Docket No. 172. As stated in Defendants' motion and the supporting declaration of Mitchell Greenberg, the documents designated as confidential are (1) portions of the transcript from Plaintiff's deposition in the matter of *Jenkins, et al. v. Godtland, et al.*, Case No. CGC-08-476453 (Cal. Super. Ct. San Francisco County) (the "*Jenkins case*"); and (2) the portions of Defendants' memorandum of points and authorities referencing and quoting from Plaintiff's deposition. *See* Mot. to File under Seal, Docket No. 172, at 1:19-21; Decl. of Mitchell Greenberg ("Greenberg Decl."), Docket No. 172-1. Defendants have clarified that they do *not* wish for these documents to be filed under seal, but rather wish to afford Plaintiff the opportunity, pursuant to Local Rule 79-5, to seek a sealing order from the Court. Mot. to File under Seal, Docket No. 172, at 1:16-18; *see* N.D. Cal. Civ. R. 79-5.

The deposition at issue was designated confidential by Plaintiffs' counsel in the *Jenkins case* pursuant to a protective order in that case, in which Plaintiff Anthony Fredianelli, Defendant Stephan Jenkins, and Defendant Brad Hargreaves were co-plaintiffs. *See* Greenberg Decl., Docket

1 No. 172-1, ¶ 3; *id.* Ex. A. Both Jenkins and Hargreaves now waive any confidentiality designation
2 they may have made to the deposition transcript. Greenberg Decl., Docket No. 172-1, ¶ 3. Yet,
3 Fredianelli has not similarly waived the confidentiality designation. *See id.* ¶ 6.

4 Local Rule 79-5 requires that the party designating a document as confidential “must file
5 with the Court and serve a declaration establishing that the designated information is sealable, and
6 must lodge and serve a narrowly tailored proposed sealing order, or must withdraw the designation
7 of confidentiality.” If that party fails to file such a declaration with seven (7) days, “the document or
8 proposed filing will be made part of the public record.” *Id.* The protective order in the *Jenkins* case
9 provides for a similar procedure, whereby a party that wishes to file a document designated as
10 confidential by another party must comply with California Rules of Court, Rule 2.551 and afford the
11 designating party at least fifteen (15) days to move to seal the confidential material. *See* Greenberg
12 Decl., Docket No. 172-1, Ex. A ¶ 14. In addition, California Rules of Court, Rule 2.551(b)(3)
13 provides a similar procedure, requiring a party that wishes to maintain the confidentiality of a
14 document “to file a motion or an application to seal the records within 10 days or to obtain a court
15 order extending the time to file such a motion or an application,” otherwise “the clerk must . . . place
16 [the records] in the public file.”

17 Here, the Court granted Plaintiff an extension to December 28, 2012 to file his opposition to
18 Defendants’ motion for summary judgment. Even assuming that this extension also applied to
19 Plaintiff’s response to Defendants’ administrative motion to file under seal, Plaintiff has not
20 responded *at all* to this motion as required under Local Rule 79-5, the protective order in the *Jenkins*
21 case, and California Rules of Court, Rule 2.551. Thus, the Court **ORDERS** that the following
22 documents are *not* to be filed under seal and directs the Clerk to make such documents part of the
23 public record:

24 (1) the pages of the deposition of Plaintiff Anthony Fredianelli taken in the *Jenkins* case as
25 submitted by Defendants; and


26 (2) the pages of the memorandum of points and authorities in support of Defendants’ motion
27 for summary judgment referencing information from that deposition.
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1 For ease of reference, the Court requests that Defendants re-submit via ECF each document
2 in a format omitting any markings or highlighting that designates confidential material.

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4 This order disposes of Docket No. 172.

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6 IT IS SO ORDERED.

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8 Dated: January 9, 2013

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11 EDWARD M. CHEN
12 United States District Judge
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